

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRESENIUS KABI USA, LLC,)	
)	
Plaintiff,)	4:18CV3109
)	
V.)	
)	
STATE OF NEBRASKA, NEBRASKA)	MEMORANDUM AND ORDER
DEPARTMENT OF CORRECTIONAL)	
SERVICES, and SCOTT FRAKES, in his)	
Official Capacity as Director of the)	
Nebraska Department of Correctional)	
Services,)	
)	
Defendants.)	

At the end of the hearing on Friday, after I denied the request for a TRO, counsel for Plaintiff asked that I “enjoin” the Defendants. I was confused and asked him to clarify. I asked him how his request was different from what I had just done by denying a TRO. He said something like it was not very different. He also said something about needing to orally move for an “injunction” for purposes of taking an appeal to the Court of Appeals. I orally denied the oral motion after hearing from counsel for the Defendants. At that time (and now) there was pending a written motion for a preliminary injunction (filing no. 8) that was separate from the motion for a temporary restraining order. (Filing no. 7.)

To be clear for the Court of Appeals, I have not denied the motion for preliminary injunction. I would have only done so if I had taken live testimony which I did not do, with the agreement of both parties, when I heard the TRO request. If counsel’s oral motion was intended as a back door way of boosting Plaintiff’s jurisdictional posture in the Court of Appeals, I wish to make clear that the motion for a preliminary injunction and the request for a permanent injunction remain pending. Thus, it is an open question to be decided by the Court of Appeals whether Plaintiff fits within the limited jurisdictional exception for appeals of the denial of temporary restraining orders.

IT IS SO ORDERED. IT IS ALSO ORDERED that the Clerk shall as soon as reasonably possible provide the Court of Appeals with a copy of this Memorandum and Order.

DATED this 12th day of August, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge